statute in the principal case undertakes to define specifically what shall be included in the term "mortgage." It clearly contemplates transactions in which the original property owner is or becomes the debtor. It was therefore rightly judged not to include conditional sales.

SOVEREIGN — TELEGRAPH AND TELEPHONE COMPANIES — LIABILITY TO SUIT OF TELEGRAPH AND TELEPHONE COMPANIES UNDER FEDERAL CONTROL. — An action was brought against a telegraph company under federal control for delay in delivery of a telegram. The defense was that the defendant company was being operated by the Postmaster General on behalf of the United States. *Held*, defense insufficient. *Witherspoon & Sons* v. *Postal Telegraph & Cable Co.*, 257 Fed. 758 (Dist. Ct., E. D. La.).

The United States cannot be sued without its consent. *Stanley* v. *Schwalby*, 162 U. S. 255. This immunity extends to governmental agents and agencies. *Maganab* v. *Hitchcock*, 202 U. S. 473. When the transportation systems were taken under federal control, Congress authorized suits against them, but prohibited issuance of process against property so taken over. See 40 STAT. AT L. 451. Some courts, in action brought against these systems, have treated the Director General of Railroads as the proper party defendant. *Rutherford* v. *Union Pacific R. Co.*, 254 Fed. 880; *Dahn* v. *McAdoo, Director General of Railroads*, 256 Fed. 549. The courts that treat the systems as being also proper parties defendant recognize them nevertheless as governmental agencies. *Jensen* v. *Lehigh Valley R. Co.*, 255 Fed. 795; *Gowan* v. *McAdoo*, 173 N. W. 440 (Minn.); *Johnson* v. *McAdoo, Director General of Railroads et al.*, 257 Fed. 757. The government assumed control over the telegraph and telephone systems for the same reasons and purposes as produced control over transportation. See 40 STAT. AT L. 904. By proclamation, the President took possession of all systems and assumed complete control, which might or might not be exercised through the then owners and managers. See 40 STAT. AT L. 1807. It would seem, therefore, that they likewise became governmental agencies. Congress made no provision for possible suits against them. Nevertheless, judgments have been rendered against these systems, operating under federal control, when the action was commenced prior to federal control. *Western Union Telegraph Co.* v. *Huffman*, 208 S. W. 183 (Tex.); *Mummaw* v. *Southwestern Telegraph & Telephone Co.*, 208 S. W. 476 (Mo.); *Danaher* v. *Southwestern Telegraph & Telephone Co.*, 209 S. W. 74 (Ark.). Also, after federal control, one court allowed an injunction to issue against a telephone company. *State* v. *Dakota Central Telephone Co. et al.*, 171 N. W. 277 (S. D.). Moreover, the companies have secured relief in their own names. *City of Amarillo* v. *Southwestern Telegraph & Telephone Co.*, 253 Fed. 638; *Postal Telegraph & Cable Co.* v. *Call, District Judge*, 255 Fed. 850. On the other hand, they have also been held governmental agencies and so not proper parties. *Southwestern Telegraph & Telephone Co.* v. *City of Houston*, 256 Fed. 690; *Railroad Commissioners of Florida* v. *Burleson et al.*, 255 Fed. 604. And an injunction has been refused because the suit was in substance against the United States. *Public Service Commission* v. *New England Telephone & Telegraph Co.*, 122 N. E. 567 (Mass.). It might be argued, in support of the principal case, that suits are included in the authority, given by the President's Proclamation, to continue operation of the systems in the usual and ordinary course of business. See 40 STAT. AT L. 1807. But the President or his ministers have no power to authorize actions against the United States or its agencies. *Maganab* v. *Hitchcock*, *supra*.

STATUTE — CONSTRUCTION — ESTATE TAX OF FEDERAL INHERITANCE TAX. — A petition was brought by an executor to determine whether, in the absence of any express directions in the will, the federal estate tax should be charged entirely against the residue of the estate or apportioned *pro rata* among all the

devisees and legatees. The Act of Congress of 1916 provided for an "Estate Tax" to be levied on the net estate transferred upon death. (39 STAT. 756, c. 463; 39 STAT. 1000; 40 STAT. 300.) *Held*, that it is chargeable entirely against the residue. *Plunkett* v. *Old Colony Trust Co.*, 124 N. E. 265 (Mass.).

The executor charged the federal estate tax *pro rata* among three legatees. This account was affirmed by the Surrogate, reversed by the Appellate Division, and on appeal, *held*, that it is chargeable entirely against the residue. *In re Hamlin*, 124 N. E. 4 (N. Y.).

The Massachusetts and the New York courts both reach the same conclusions for exactly the same reasons. The difference between an estate tax and a legacy tax is well recognized. See *Minot* v. *Winthrop*, 162 Mass. 113, 124, 38 N. E. 512, 516. A legacy tax is a tax upon the right to receive property by will as distinguished from a tax upon the right to devise property, and so is chargeable upon the individual legacy. An estate tax is one imposed upon the net estate transferred by death and not upon each individual succession resulting from death. *In re Roebling's Estate*, 89 N. J. Eq. 163, 104 Atl. 295. Hence it is chargeable upon the estate and therefore upon the residuary fund. At the time Congress enacted the statutes under consideration legacy taxes were common in the states. See RANDOLPH, UNITED STATES INHERITANCE AND TRANSFER TAXES, 1917, p. 54. Previous federal legislation, the Act of 1898, imposed a legacy tax. See 30 STAT. AT L. 464. This act had been held constitutional. *Knowlton* v. *Moore*, 178 U. S. 41. If Congress had intended a legacy tax it would have followed the language of that act. Moreover, the intention of Congress to enact an estate tax is evident from the records of legislative proceedings in connection with the passage of the law. See Report No. 922, 64th Congress, 1st session, 5. The instant decisions, of importance practically, seem certain to be followed.

TAXATION — PROPERTY SUBJECT TO TAXATION — GOOD WILL OF A BUSINESS. — To ascertain the value of the intangible property in Arizona belonging to a foreign corporation, the board of equalization capitalized the net profits realized by the corporation from Arizona sales in 1917 at 25 per cent, and deducted from the result the value of the corporation's tangible property within the state. This valuation was distributed among the counties of the state in the proportion of their several contributions to the gross sales of the corporation, with instructions to the county authorities to enter on the assessment rolls the words: "Tangible and intangible valuation of property above enumerated based on excessive earnings." Arizona statutes provide that all property of whatsoever kind or nature is subject to taxation. (1913 ARIZONA REV. STAT., Title 49, c. 4, §§ 4846, 4847.) *Held*, that the assessment was unwarranted. *Standard Oil Co.* v. *Howe*, 257 Fed. 481 (Circ. Ct. App.).

Although a tax on excessive earnings was not authorized by the statutes of Arizona, the court might well have confirmed the assessment, on the ground that it related to the good will of the plaintiff's business. The court failed to regard the result produced, but considered simply the method used. See *Great Northern Ry. Co.* v. *Okanogan County*, 223 Fed. 198, 201. Statutes authorizing a tax on foreign corporations doing business in interstate commerce in terms of gross receipts have often been held constitutional, being construed as substantially imposing a tax either on the property of the corporation within the state or on the privilege of doing business there, the value of which is measured by the gross earnings. *State* v. *U. S. Express Co.*, 114 Minn. 346, 131 N. W. 489; *Maine* v. *Grand Trunk Ry.*, 142 U. S. 217. See *McHenry* v. *Alford*, 168 U. S. 651, 671. That business good-will is a form of property is well recognized to-day. *People* v. *Roberts*, 159 N. Y. 70, 53 N. E. 685. See 16 HARV. L. REV. 135. And it may be taxed at the place of business. *Adams Express Co.* v. *Ohio State Auditor*, 166 U. S. 185. See Joseph H. Beale, "Jurisdiction to